

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of: Alan R. Davis *et al.*

Serial No.: 09/457,421

Group Art No.: Not yet Assigned

Filed: December 07, 1999

Examiner: Not yet Assigned

Atty. Dkt. No.: AHP92038P3

Confirmation: Not yet Assigned

Customer Number: 25291

For: RECOMBINANT ADENOVIRUS VACCINES

Attention: Office of Petitions  
 Commissioner for Patents  
**Box DAC**  
 Washington, DC 20231

## CERTIFICATION UNDER 37 CFR 1.10

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number ET814782511US addressed to the Commissioner for Patents, Box DAC, Washington, DC 20231.

May 3, 2002  
 Date

Elizabeth Backer Melick  
 Elizabeth Backer Melick

## RESPONSE TO NOTICE TO FILE MISSING PARTS;

MAILED JANUARY 08, 2000

Dear Sir:

In response to the Notice to File Missing Parts of Application, dated January 08, 2000, there are enclosed herewith:

- (a) This Response to the Notice to File Missing Parts;
- (b) A combined Declaration and Power Of Attorney;
- (c) A Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b);
- (d) A copy of the Notice to File Missing Parts;
- (e) A copy of the Notice of Abandonment;
- (e) Authorization to charge Deposit Account No. 01-1425; and
- (f) A return postcard.

RECEIVED

MAY 09 2002

OFFICE OF PETITIONS

## **REMARKS**

### **I.     Status of the Application**

The present application, U.S. serial No. 09/457,421, filed December 07, 1999, now abandoned, is a continuation-in-part of U.S. application serial No. 08/276,289, filed July 20, 1994, now abandoned, which is a continuation-in-part of U.S. application serial No. 08/105,232, filed August 11, 1993, now abandoned, which is a continuation-in-part of U.S. serial No. 07/926,491, filed August 07, 1992, now abandoned.

### **II.    Explanation of the Cause of the Delay in Filing the Petition**

A Notice to File Missing Parts of Application (U.S. serial No. 09/457,421) was mailed January 18, 2000, which set a two-month period to comply, to and including March 18, 2000. On July 18, 2000, Applicants' then attorney of record, Luann Cserr, filed a request for a 4-month extension of time, to and including July 18, 2000, and filed a continuation application, which was assigned U.S. serial No. 09/618,360, claiming priority from U.S. application serial No. 09/457,421.

However, Applicants' attorney inadvertently omitted filing a Response to the Notice to File Missing Parts (*i.e.*, a signed declaration), on or before the 6-month due date of July 18, 2000. A Notice of Abandonment of U.S. application serial No. 09/457,421, was mailed October 10, 2001, addressed to Applicants' attorney, Luann Cserr, Attorney at Law, 166 Wheeler Avenue, Suite 100, Cranston, RI 02906-3510. Thus, U.S. application serial No. 09/618,360 is presently pending and U.S. application serial No. 09/457,421 was unintentionally abandoned as of March 18, 2000, and was therefore not co-pending on July 18, 2000.

Subsequently, in January 2001, responsibility for U.S. application serial No. 09/457,421 and U.S. application serial No. 09/618,360 was transferred to the undersigned. The first time the undersigned became aware of the Notice of Abandonment of U.S. application

serial No. 09/457,421 was when he received on January 2, 2002 the Office Action in U.S. application serial No. 09/618,360, mailed December 19, 2001. In that Office Action, the Examiner stated that U.S. application serial No. 09/618,360 was not entitled to the August 07, 1992 priority filing date for U.S. application serial No. 07/926,491, because U.S. application serial No. 09/457,421 had been abandoned.

The undersigned then looked in his file of U.S. application serial No. 09/457,421, but the file did not contain the Notice of Abandonment. The undersigned then requested a copy of the Notice of Abandonment from the United States Patent and Trademark Office; a copy of the Notice was received by the undersigned on April 25, 2002.

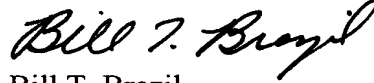
Applicants assert that it was not their intention to abandon U.S. application serial No. 09/457,421 (instead, it was their intention to maintain the chain of priority from U.S. application serial No. 07/926,491 through U.S. application serial No. 09/618,360), and as such, respectfully submit herewith a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b).

Applicants submit also, a combined declaration and power of attorney, and authorization to charge the amount of \$1,410.00 to Deposit Account No. 01-1425. The amount of \$1,410.00 includes \$1,280.00, which is the fee for a petition to revive an unintentionally abandoned application and \$130.00, which is the surcharge fee for late filing of a declaration.

Attached is a copy of the Notice to File Missing Parts and the Notice of Abandonment.

Should any additional fees be deemed necessary, please charge Deposit Account No. 01-1425.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill T. Brazil". The signature is fluid and cursive, written over the printed name.

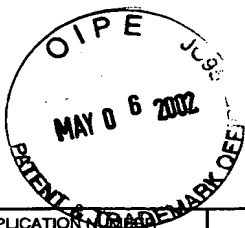
Bill T. Brazil

Reg. No. 50,733

Agent for Applicants

Wyeth  
Five Giralda Farms  
Madison, NJ 07940  
(732) 274-4843

Date: May 03, 2002



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO./TITLE
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09/457,421 12/07/99 DAVIS A AHP92038-2-C

0262/0118

LUANN CSERR  
ATTORNEY AT LAW  
42 WOODBURY STREET  
PROVIDENCE RI 02906-3510

NOT ASSIGNED

1642

DATE MAILED:

01/18/00

**NOTICE TO FILE MISSING PARTS OF APPLICATION**  
**Filing Date Granted**

An Application Number and Filing Date have been assigned to this application. The items indicated below, however, are missing. Applicant is given TWO MONTHS FROM THE DATE OF THIS NOTICE within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a). If any of items 1 or 3 through 5 are indicated as missing, the SURCHARGE set forth in 37 CFR 1.16(e) of ☐ \$65.00 for a small entity in compliance with 37 CFR 1.27, or ☒ \$130.00 for a non-small entity, must also be timely submitted in reply to this NOTICE to avoid abandonment.

If all required items on this form are filed within the period set above, the total amount owed by applicant as a ☐ small entity (statement filed) ☒ non-small entity is \$ 130.00.

☐ 1. The statutory basic filing fee is:

- ☐ missing.
- ☐ insufficient.

Applicant must submit \$ \_\_\_\_\_ to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).

☐ 2. The following additional claims fees are due:

- \$ \_\_\_\_\_ for \_\_\_\_\_ total claims over 20.
- \$ \_\_\_\_\_ for \_\_\_\_\_ independent claims over 3.
- \$ \_\_\_\_\_ for multiple dependent claim surcharge.

Applicant must either submit the additional claim fees or cancel additional claims for which fees are due.

☒ 3. The oath or declaration:

- ☐ is missing or unsigned.
- ☒ does not cover the newly submitted items.

An oath or declaration in compliance with 37 CFR 1.63, including residence information and identifying the application by the above Application Number and Filing Date is required.

☐ 4. The signature(s) to the oath or declaration is/are by a person other than inventor or person qualified under 37 CFR 1.42, 1.43 or 1.47.

A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.

☐ 5. The signature of the following joint inventor(s) is missing from the oath or declaration:

An oath or declaration in compliance with 37 CFR 1.63 listing the names of all inventors and signed by the omitted inventor(s), identifying this application by the above Application Number and Filing Date, is required.

☐ 6. A \$50.00 processing fee is required since your check was returned without payment (37 CFR 1.21(m)).

☐ 7. Your filing receipt was mailed in error because your check was returned without payment.

☐ 8. The application was filed in a language other than English.

Applicant must file a verified English translation of the application, the \$130.00 set forth in 37 CFR 1.17(k), unless previously submitted, and a statement that the translation is accurate (37 CFR 1.52(d)).

☐ 9. OTHER: \_\_\_\_\_

Direct the reply and any questions about this notice to "Attention: Box Missing Parts."

**A copy of this notice MUST be returned with the reply.**

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

05/09/2002 GTEFFERA 00000042 011425 09457421

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## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/457,421	12/07/1999	A. R. DAVIS	AHP92038-2-C

CONFIRMATION NO. 7663

ABANDONMENT/TERMINATION  
LETTER

\*OC00000006882620\*

LUANN CSERR  
ATTORNEY AT LAW  
166 Wheeler Avenue, Suite 100  
Cranston, RI 02906-3510

Date Mailed: 10/10/2001

## NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 01/18/2000.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to "Office of Petitions" at (703) 305-9282.

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*A copy of this notice **MUST** be returned with the reply.*

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Initial Patent Examination Division (703) 308-1202

PART 3 - OFFICE COPY